

## **REMARKS**

Claims 23-38 and 40-48 are currently pending. No claims have been amended or canceled. Claims 49-51 have been added. With entry of this amendment, claims 23-38 and 40-51 will be pending.

Claims 23-25, 27-28, 31, and 33-34 were rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 4,744,993 issued to Bisson (“Bisson”). Claims 26, 29-30, 32, 35-38 and 40-48 were rejected by 35 U.S.C. § 103(a) as being unpatentable over Bisson in view of U.S. Patent No. 3,989,853 issued to Forkner (“Forkner”).

### Independent claim 23 and dependent claims 24-35 and 49

Independent claim 23 recites a process for setting an expanded foodstuff, comprising the steps of passing an expanded foodstuff composition, which is in a plastic state and is therefore capable of further expansion or contraction, at a first temperature and a first pressure into a setting region at a second temperature, said second temperature being lower than said first temperature; and cooling and setting said expanded foodstuff composition which is to be set in the setting region at a second pressure which is lower than said first pressure, whereby to produce a set expanded foodstuff.

The Examiner contends that Bisson discloses a process during which “foodstuff passing through the extruder is in a plastic state; thus, it is inherently capable of further expansion or contraction. The foodstuff is in expanded state because it is passed through the extruder.” Office action, page 3. The Applicant respectfully disagrees with the Examiner’s assumption. Extrusion *per se* is not a process that necessarily results in expansion of a food product. The purpose of Bisson’s extrusion is to convert the foodstuff into a plastic state. But, contrary to the Applicant’s claimed process, *all* of Bisson’s expansion occurs subsequently by application of a vacuum: “it is expanded by being subjected to a sub-atmospheric pressure . . .” Col. 1, lines 46-47.

Expansion may occur if, on exiting the extruder, the moisture present in the foodstuff is vaporized. In practice, any water in the foodstuff will contain dissolved solids and cooling to some extent will occur immediately on exiting the extruder. Therefore, to generate steam (as expanding agent), the foodstuff may be heated, e.g., to several degrees higher than 100° C during extrusion. Bisson’s expansion step, which, again, requires the use of sub-atmospheric pressure, is entirely different. Absolutely nowhere in Bisson is there reference to expansion

occurring as a result of the extrusion. Consequently, Bisson does not teach or suggest the Applicant's claimed subject matter.

Accordingly, claim 23 is allowable.

Moreover, claim 24 depends from allowable claim 23, and is therefore allowable. Claim 24 also contains additional patentable subject matter. More particularly, claim 24 specifies that the first temperature is in the range of 70° to 150° C. The Examiner concedes that Bisson only teaches "passing the mixture though an extruder having temperature in the range of 30-70 degrees C." Office action, page 2. Applicant's claimed temperature range is greater than Bisson's range because the Applicant accomplishes the expansion in a different way than Bisson. Consequently, claim 24 is further allowable.

New claim 49 depends from allowable claim 23, and is therefore allowable. Claim 49 also contains additional patentable subject matter. More particularly, claim 49 specifies that the first temperature is in the range of 100° to 150° C. This is well above Bisson's temperature range, again, because the expansion steps in these two processes are so different. There is no disclosure anywhere in Bisson of heating the foodstuff to a temperature greater than 100° C. Accordingly, new claim 49 is allowable.

In view of the foregoing, allowance of claims 23 and claims 24-35 and 49 is respectfully requested.

Independent claim 36 and dependent claims 37-38, 40-47 and 50

Independent claim 36 recites a process for setting an expanded foodstuff, comprising the steps of passing a foodstuff composition which is in at least a partially expanded condition and which contains a vaporisable expanding agent, at a first temperature and a first pressure into a setting region at a second temperature, said second temperature being lower than said first temperature; and cooling and setting said foodstuff composition which is to be set in the setting region at a second pressure which is lower than said first pressure so as to further expand the foodstuff composition by evaporation of the vaporisable expanding agent and produce a set expanded foodstuff.

For similar reasons as discussed above, Bisson does not teach or suggest the subject matter recited in independent claim 36 because, among other reasons, Bisson requires expansion by exposure to sub-atmospheric pressure. *See* Bisson, col. 1, lines 46-47. Forkner does not cure Bisson's deficiencies.

Forkner discloses a process in which already-formed products are subsequently expanded at or near the point of sale to the final consumer. Furthermore, expansion is accomplished by subsequent heating. *See* Forkner, col. 4, lines 27-35. Therefore, one of skill in the art would not be motivated to combine Bisson and Forkner because their teachings are so different. Furthermore, even if combined, Bisson and Forkner do not teach or suggest the subject matter of independent claim 26. More particularly, in contrast to Forkner's expansion technique, the Applicant claims "cooling and setting said foodstuff composition which is to be set in the setting region at a second pressure which is lower than said first pressure so as to further expand the foodstuff composition by evaporation of the vaporisable expanding agent and produce a set expanded foodstuff." Again, the Applicant's claimed expansion differs from Bisson's expansion for the reasons set forth above.

Consequently, claim 36 is allowable.

Claims 38 and 50 depend from allowable claim 36, and are therefore allowable.

Furthermore, these claims contain additional patentable subject matter for the same and similar reasons as set forth above with respect to claims 24 and 49, respectively.

Accordingly, claims 38 and 50 are allowable.

Allowance of claims 36-38, 40-47 and 50 is respectfully requested.

#### Independent claim 48 and dependent claim 51

Claim 48 recites a process for setting an expanded foodstuff, comprising the steps of passing a foodstuff composition which is in at least a partially expanded condition and in a plastic state and is therefore capable of further expansion or contraction and which contains a vaporisable expanding agent, at a first temperature and substantially atmospheric pressure into a setting region at a second temperature, said second temperature being lower than said first temperature; and cooling and setting said foodstuff composition which is to be set in the setting region at a pressure which is lower than atmospheric pressure so as to further expand the foodstuff composition by evaporation of the vaporisable expanding agent and produce a set expanded foodstuff.

For the same and similar reasons as set forth above with respect to claim 36, independent claim 48 is allowable. Similarly, for the same and similar reasons as set forth above with respect to claims 49 and 50, claim 51 contains additional patentable subject matter, and therefore, is allowable.

**CONCLUSION**

In view of the foregoing, allowance of claims 23-38 and 40-51 is respectfully requested. The Applicant wishes to note that the reasons set forth above may not be the only reasons the independent and dependent claims are allowable.

Should any issues remain precluding the allowance of the application, the Examiner is strongly encouraged to contact the undersigned at the telephone number listed below.

Respectfully submitted,



Gregory J. Hartwig  
Reg. No. 46,761

Docket No.: 063511-9043-00  
Michael Best & Friedrich LLP  
100 East Wisconsin Avenue  
Milwaukee, Wisconsin 53202-4108

(414) 271-6560

X:\clientb\063511\9043\A0781118.1